

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHANTELL GOSZTYLA,  
Plaintiff,  
v.  
WEI GU, et al.,  
Defendants.

Case No. 1:22-cv-00610-KES-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT:

PLAINTIFF’S MOTION TO EXCLUDE DR.  
FEINBERG’S EXPERT OPINION BE DENIED;  
and

DEFENDANT GU’S MOTION FOR SUMMARY  
JUDGMENT BE GRANTED.

(ECF No. 57; ECF No. 64)

OBJECTIONS, IF ANY, DUE WITHIN  
THIRTY DAYS

Plaintiff Chantell Gosztyla is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This case proceeds on Plaintiff’s claim that her primary care provider, Defendant Wei Gu, M.D. (“Dr. Gu”), was deliberately indifferent to her serious medical need for chiropractic manipulative therapy in violation of the Eighth Amendment. (ECF No. 12). Plaintiff sues Dr. Gu in his official and individual capacities, and seeks monetary damages as well as prospective injunctive relief. (*Id.*; ECF No. 11).

Before the Court is Dr. Gu’s motion for summary judgment (ECF No. 57), which is now fully briefed and ripe for consideration. Also before the Court is Plaintiff’s motion to exclude Dr. B. Feinberg, M.D.’s (“Dr. Feinberg”) expert opinion in support of Dr. Gu’s motion for summary judgment, which is also ripe for consideration. (ECF No. 64 at 46–61).

As explained below, the Court recommends denying Plaintiff's motion to exclude Dr. Feinberg's expert opinion and granting Dr. Gu's motion for summary judgment.

### **I. BACKGROUND**

Plaintiff is presently incarcerated at Central California Women's Facility ("CCWF"). On May 23, 2022, she filed this lawsuit against Dr. Gu, who was one of her medical providers at CCWF, and four other defendants. (ECF No. 1; ECF No. 12). The operative complaint is Plaintiff's verified first amended complaint, filed October 13, 2022.<sup>1</sup> (ECF No. 11).

In her verified first amended complaint, Plaintiff alleges as follows with respect to her Eighth Amendment deliberate indifference claim against Dr. Gu. In 2019, Plaintiff began seeking medical treatment at CCWF for subluxation of the fourth lateral rib. (ECF No. 11 at 5). When she saw Dr. Gu, he allegedly told her "he had never heard of an 'unstable' rib." (*Id.*) Dr. Gu also allegedly refused to review Plaintiff's past medical records, which she asserts would have shown that she was diagnosed with subluxation of the fourth right lateral rib following a January 2008 motor vehicle accident, and that since then, she had received chiropractic manipulative therapy to "[a]lleviate chronic pain [and] reestablish rib placement so that physical therapy would be successful in stabilizing [sic] [the] rib." (*Id.* at 5–6).

Plaintiff alleges that the "only way to properly treat" the subluxation of her fourth lateral right rib is by chiropractic manipulative therapy, but that as of the date of filing her first amended complaint, Dr. Gu has refused to refer her to a chiropractor or review her pre-incarceration medical records. (*Id.* at 6–7). Plaintiff maintains that Dr. Gu's refusal to do so constitutes deliberate indifference to a serious medical need in violation of the Eighth Amendment. (*Id.*)

After screening Plaintiff's first amended complaint, the District Judge ordered that "[t]his case shall proceed on Plaintiff's Eighth Amendment claim against Defendant Gu, in his individual and official capacities, for deliberate indifference to Plaintiff's serious medical need, and "[a]ll other claims and Defendants are dismissed." (ECF No. 13).

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<sup>1</sup> The first amended complaint includes a declaration signed by Plaintiff under penalty of perjury attesting to the accuracy of her allegations. (*See* ECF No. 11 at 9). As such, the Court treats it as a verified complaint, which may be considered as evidence for purposes of summary judgment. *See Schroeder v. McDonald*, 55 F.3d 454, 460 (9th Cir. 1995) ("A verified complaint may be used as an opposing affidavit under Rule 56 . . . [if it is] based on personal knowledge and set[s] forth specific facts admissible in evidence.").

## II. THE PARTIES' MOTIONS

### A. Dr. Gu's Motion for Summary Judgment<sup>2</sup>

On November 12, 2024, Dr. Gu moved for summary judgment on Plaintiff's Eighth Amendment claim against him. (ECF No. 57). In support of his motion for summary judgment and accompanying memorandum, Dr. Gu submitted the following: (1) a statement of undisputed facts, (2) his own declaration, (3) the declarations of Dr. Feinberg and D. Myers, and (4) Plaintiff's medical records.<sup>3</sup> (See ECF Nos. 57-1 to 57-7).

Dr. Feinberg is the chief medical consultant for the California Correctional Health Care Services ("CCHCS") Office of Legal Affairs; his declaration provides his "medical-expert opinion as to [Plaintiff's] claims" after review of Plaintiff's first amended complaint and her medical records kept by CCHCS. (See Declaration of Dr. B. Feinberg, M.D. ("Dr. Feinberg Decl."), ECF No. 57-3 at ¶¶ 3, 7–8). D. Myers is a CCWF employee who reviewed Plaintiff's inmate records in order to provide the date of her transfer from county jail to CCWF. (See Declaration of D. Myers ("Myers Decl."), ECF No. 57-7).

After the Court extended the time for Plaintiff to respond, Plaintiff filed a response in opposition to Dr. Gu's summary judgment motion on January 2, 2025. (ECF No. 64 at 1–27). With her response, Plaintiff submitted the following: (1) a response to Dr. Gu's statement of facts (*id.* at 319–35); (2) her own declaration (*id.* at 28–45); (3) her pre-incarceration chiropractic treatment records and billing statements (*id.* at 62–98, 259); (4) her medical records while confined at CCWF (*id.* at 99–218); (5) records of her physical therapy sessions at CCWF (*id.* at 261–318); (6) an excerpt from a dictionary that defines the word "subluxation" (*id.* at 257–58, 260); and (7) her health care grievance records and requests for reasonable accommodations (*id.* at 219–56).

On January 16, 2025, Dr. Gu filed a reply in support of his summary judgment motion. (ECF No. 67). With his reply, Dr. Gu submitted the following: (1) a reply statement of undisputed

<sup>2</sup> Dr. Gu's motion for summary judgment also included a warning to Plaintiff consistent with Rand v. Rowland, 154 F.3d 952, 962–63 (9th Cir. 1998) (en banc). (See ECF No. 57-8).

<sup>3</sup> The Court notes that Plaintiff's medical records were attached as exhibits to Dr. Feinberg's declaration. (See ECF No. 57-5). Dr. Gu avers in his declaration that he reviewed the medical records attached to Dr. Feinberg's declaration and they are "true and correct copies that accurately reflect [his] notes and files concerning [Plaintiff] during the time she was [his] patient at CCWF." (Declaration of Dr. Gu ("Dr. Gu Decl."), ECF No. 57-6 at ¶ 6).

1 facts (ECF No. 67-1); (2) objections to some of the evidence Plaintiff submitted with her response  
 2 (ECF No. 67-3); (3) the declaration of CCWF chief medical executive Dr. Akinwumi Ola, M.D.  
 3 (ECF Nos. 67-4, 67-5); and (4) the declaration of Dr. Gu’s attorney with supporting exhibits  
 4 including additional medical records (ECF Nos. 67-6, 67-7).

### 5 **B. Plaintiff’s Motion to Exclude Dr. Feinberg’s Expert Opinion<sup>4</sup>**

6 With her response to Dr. Gu’s summary judgment motion, Plaintiff also filed a motion  
 7 seeking to exclude Dr. Feinberg’s expert opinion. (ECF No. 64 at 46–61). Dr. Gu responded to  
 8 Plaintiff’s motion on January 16, 2025. (ECF No. 67-2). To date, Plaintiff has not filed a reply.

### 9 **III. ANALYSIS OF PLAINTIFF’S MOTION TO EXCLUDE DR. FEINBERG’S 10 EXPERT OPINION**

11 Because it presents an evidentiary issue, the Court first addresses Plaintiff’s motion to  
 12 exclude Dr. Feinberg’s medical expert opinion before turning to Dr. Gu’s summary judgment  
 13 motion.

14 Plaintiff argues that the Court should exclude Dr. Feinberg’s expert opinion in his  
 15 declaration because it is based on a “misrepresentation of [the] facts” and “selective bias.” (ECF  
 16 No. 64 at 46). She asserts that Dr. Feinberg’s declaration is “misleading, vague, subjective, and  
 17 blatantly [sic] wrong in many aspects.” (*Id.*) In addition, Plaintiff asserts that it is apparent to her  
 18 that Dr. Feinberg is not “well-versed in chiropractic care and/or research methods.” (*Id.* at 47,  
 19 61). Plaintiff then points to several instances in the declaration that purportedly support her  
 20 position. (*Id.* at 47–61). In response, Dr. Gu argues that Plaintiff’s motion lacks foundation and is  
 21 based on inadmissible lay opinion. (ECF No. 67-2).

22 An “[e]xpert opinion is admissible and may [be considered at the] summary judgment  
 23 [stage] if it appears the affiant is competent to give an expert opinion and the factual basis for the  
 24 opinion is stated in the affidavit, even though the underlying factual details and reasoning upon  
 25 which the opinion is based are not.” *Bulthuis v. Rexall Corp.*, 789 F.2d 1315, 1318 (9th Cir.  
 26 1985); *see also* *Stephens v. Union Pac. R.R. Co.*, 935 F.3d 852, 856 (9th Cir. 2019) (“Federal  
 27 Rule of Evidence 702(b) permits the introduction of expert testimony only if ‘the testimony is  
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<sup>4</sup> Plaintiff misspelled Dr. Feinberg’s name throughout her motion and other briefing, which the Court has corrected without identifying each occurrence.

1 based on sufficient facts or data.”).

2 The Court finds that Dr. Feinberg is qualified to give a medical expert opinion based on  
3 his training and experience. Dr. Feinberg states in his declaration that he graduated from  
4 University of California at San Francisco School of Medicine in 1994, is licensed to practice  
5 medicine in California, is board-certified in internal medicine with more than twenty-five years of  
6 experience, and has practiced within the correctional health care field since 2010. (Dr. Feinberg  
7 Decl. ¶¶ 2–4). Dr. Feinberg has also provided the factual basis for his expert opinion. Dr.  
8 Feinberg specifically explains that his opinion regarding the treatment Dr. Gu provided to  
9 Plaintiff is based on his medical training and expertise, a 2018 article from the journal  
10 Chiropractic & Manual Therapies, and his review of Plaintiff’s first amended complaint and her  
11 prison medical records kept by CCHCS. (*Id.* at ¶¶ 8, 30). Dr. Feinberg has also attached the  
12 medical records he found pertinent to his declaration for the Court’s review. (*See* ECF No. 57-5).

13 Upon review, the Court concludes that Plaintiff has not presented any basis warranting the  
14 exclusion of Dr. Feinberg’s declaration at the summary judgment stage. Although Plaintiff  
15 disagrees with Dr. Feinberg’s characterization of her medical records and his reliance on the 2018  
16 journal article, such disagreement provides no basis to exclude Dr. Feinberg’s declaration. At  
17 most, Plaintiff’s arguments amount to a challenge to the weight to be assigned to Dr. Feinberg’s  
18 medical opinion rather than a challenge to its admissibility. Ultimately, Plaintiff’s challenge to the  
19 “facts and data underlying [Dr. Feinberg’s] opinion and his method of arriving at it” is fodder for  
20 cross-examination at trial. *Bieghler v. Kleppe*, 633 F.2d 531, 534 (9th Cir. 1980); *see Children’s*  
21 *Broad. Corp. v. Walt Disney Co.*, 357 F.3d 860, 865 (8th Cir. 2004) (“As a general rule, the  
22 factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility,  
23 and it is up to the opposing party to examine the factual basis for the opinion in cross-

24 Therefore, the Court recommends denying Plaintiff’s motion to exclude Dr. Feinberg’s  
25 expert opinion.

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#### IV. ANALYSIS OF DR. GU'S MOTION FOR SUMMARY JUDGMENT

##### A. Applicable Legal Standards

##### i. Summary Judgment

A party may move for summary judgment on a claim or defense. Fed. R. Civ. P. 56(a). Summary judgment in favor of a party is appropriate when there “is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc) (“If there is a genuine dispute about material facts, summary judgment will not be granted.”). A party asserting that a fact cannot be disputed must support the assertion by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials, or showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

A party moving for summary judgment “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). “Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party’s case.” In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010). If the moving party does so, “the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial,” which is not a light burden, the party “must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party’s favor.” Id.; see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986) (“The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.”). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Celotex, 477 U.S. at 322.

1 Additionally, “[a] summary judgment motion cannot be defeated by relying solely on conclusory  
2 allegations unsupported by factual data.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

3 In reviewing the evidence at the summary judgment stage, the Court “must draw all  
4 reasonable inferences in the light most favorable to the nonmoving party.” Comite de Jornaleros  
5 de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011). It need only  
6 draw inferences, however, where there is “evidence in the record . . . from which a reasonable  
7 inference . . . may be drawn”; the court need not entertain inferences that are unsupported by fact.  
8 Celotex, 477 U.S. at 330 n. 2 (citation omitted). Additionally, “[t]he evidence of the non-movant  
9 is to be believed.” Anderson, 477 U.S. at 255. Further, the Court may consider other materials in  
10 the record not cited to by the parties but is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen  
11 v. San Francisco Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001).

12 “While courts should construe liberally motion papers and pleadings filed by *pro se*  
13 inmates and should avoid applying summary judgment rules strictly, the *pro se* prisoner must  
14 nevertheless identify or submit some competent evidence that would preclude summary  
15 judgment.” Wilkins v. Barber, No. 23-15511, 2025 WL 687961, at \*1 (9th Cir. Mar. 4, 2025)  
(internal citations and quotation marks omitted).

## 16 **ii. Deliberate Indifference to Serious Medical Needs**

17 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
18 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,  
19 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires Plaintiff  
20 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition  
21 could result in further significant injury or the unnecessary and wanton infliction of pain,’” and  
22 (2) that “the defendant’s response to the need was deliberately indifferent.” Id. (quoting  
23 McGuckin v. Smith, 974 F.2d 1050, 1059–60 (9th Cir. 1992) (citation and internal quotations  
24 marks omitted), overruled on other grounds by WMX Technologies v. Miller, 104 F.3d 1133 (9th  
25 Cir. 1997) (en banc)).

26 The “second prong—defendant’s response to the need was deliberately indifferent—is  
27 satisfied by showing (a) a purposeful act or failure to respond to a prisoner’s pain or possible  
28 medical need and (b) harm caused by the indifference.” Jett, 439 F.3d at 1096. A difference of



1 opinion between an inmate and prison medical personnel—or between medical professionals—  
 2 regarding the appropriate course of treatment does not by itself amount to deliberate indifference  
 3 to serious medical needs. Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v.  
 4 Vild, 891 F.2d 240, 242 (9th Cir. 1989). To establish that a difference of opinion rises to the level  
 5 of deliberate indifference, “a prisoner must show that the chosen course of treatment ‘was  
 6 medically unacceptable under the circumstances,’ and was chosen ‘in conscious disregard of an  
 7 excessive risk to [the prisoner’s] health.’” Toguchi, 391 F.3d at 1058 (alteration in original)  
 8 (quoting Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996)).

#### 9 **B. Summary of the Parties’ Arguments**

10 Dr. Gu raises three primary arguments in his summary judgment motion. The Court  
 11 briefly summarizes each argument and Plaintiff’s response.

12 First, Dr. Gu argues that Plaintiff’s Eighth Amendment claim against him in his official  
 13 capacity is barred by the Eleventh Amendment. (ECF No. 57-1 at 15–16; ECF No. 67 at 2).

14 In her response, Plaintiff concedes that the Eleventh Amendment bars her official capacity  
 15 claim for monetary damages. (ECF No. 64 at 11–12).

16 Second, Dr. Gu argues that he is entitled to judgment as a matter of law on the merits of  
 17 Plaintiff’s Eighth Amendment claim because he provided medically acceptable treatment under  
 18 the circumstances and did not consciously disregard an excessive risk to Plaintiff’s health. (ECF  
 19 No. 57-1 at 17–22). Dr. Gu asserts that the undisputed evidence shows he did not “consciously  
 20 disregard or purposefully ignore [Plaintiff’s] complaints of rib pain, but reviewed her medical  
 21 records, examined her, and advised that her condition was chronic and could be managed with  
 22 home exercise and pain medication.” (See id. at 23). Dr. Gu additionally asserts that he is entitled  
 23 to qualified immunity. (Id. at 22–23).

24 In response to Dr. Gu’s second argument, Plaintiff argues that summary judgment is  
 25 improper as there are triable issues of fact regarding her Eighth Amendment deliberate  
 26 indifference claim. (ECF No. 64 at 12–19). She specifically asserts that: (1) the evidence shows  
 27 Dr. Gu failed to provide her medically necessary treatment for chronic rib pain or refer her to a  
 28 chiropractor; (2) Dr. Gu improperly refused to review her pre-incarceration chiropractic treatment  
 records; (3) Dr. Gu’s failure to provide adequate medical treatment exacerbated her medical



condition; (4) Dr. Gu had a duty to refer her to a chiropractor under Cal. Code of Regs., Title 15, Section 3999.200, which she asserts does not exclude chiropractic services; and (5) other medical providers who saw Plaintiff prior and subsequent to Dr. Gu treated her rib pain, and one subsequent doctor placed a request for service for Plaintiff to be seen by a chiropractor. (*Id.*) Plaintiff further argues that Dr. Gu is not entitled to qualified immunity. (*Id.*)

Third, Dr. Gu argues that Plaintiff is not entitled to punitive damages because she has failed to demonstrate that he acted with “the type of evil motive or intent or reckless and callous indifference.” (ECF No. 57 at 23).

In response, Plaintiff argues that monetary damages are appropriate based on the difficulties she encountered while seeking medical treatment from Dr. Gu for subluxation of her rib. (ECF No. 64 at 19–25). She asserts that Dr. Gu’s actions, or lack thereof, have “forced [her] to live the past four years incarcerated in wonton and unnecessary pain.” (*Id.* at 25).

### **C. Summary Judgment Evidence<sup>5</sup>**

#### **i. Plaintiff’s Medical History Prior to Incarceration at CCWF**

Plaintiff states in her declaration that she was involved in a motor vehicle accident in January 2008, which she claims resulted in injuries including subluxation of her right rib and torn ligaments in her right shoulder.<sup>6</sup> (Declaration of Plaintiff (“Plaintiff’s Decl.”), ECF No. 64 at 29). Plaintiff was in a second motor vehicle accident in April 2009. (*Id.*) She underwent orthopedic surgery on her shoulder in August 2008. (*Id.*) And from 2008 until her arrest in 2018, Plaintiff states that she received chiropractic spinal manipulation therapy and physiotherapy. (*Id.* at 29–30).

After her arrest on March 9, 2018, Plaintiff was detained at the Sacramento County Main Jail. (*Id.* at 30). She was released to California Department of Corrections and Rehabilitation

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<sup>5</sup> Except as otherwise noted, the facts are undisputed. Additionally, the Court notes that all citations are to the CM/ECF document number and page rather than any internal page numbers.

<sup>6</sup> Dr. Gu has lodged objections to several paragraphs in Plaintiff’s declaration on the basis that they either lack foundation, are not relevant, contain inadmissible lay opinion testimony, or constitute inadmissible hearsay. (ECF No. 67-3 at 3–4). Dr. Gu lodged these objections in a cursory manner without identifying the specific information that constitutes the basis for each objection. Moreover, much of Plaintiff’s declaration concerns events within her personal knowledge. The Court therefore overrules Dr. Gu’s objections to Plaintiff’s declaration. *See Burch v. Regents of Univ. of California*, 433 F. Supp. 2d 1110, 1124 (E.D. Cal. 2006) (“The [C]ourt is not inclined to comb through these documents, identify potential hearsay, and determine if an exception applies—all without guidance from the parties.”).

1 (“CDCR”) custody and transferred to CCWF on May 16, 2019. (*Id.* at 30; *see also* Myers Decl. ¶  
 2 4). At the time of transfer, the county jail sent a discharge summary to CCWF. (ECF No. 57-5 at  
 3 2). There was no mention of a rib disorder or rib pain in the discharge summary although Plaintiff  
 4 avers in her declaration that she complained of rib pain and requested chiropractic care while in  
 5 county jail.<sup>7</sup> (Pl. Decl. at 30).

6 Plaintiff has submitted some of her pre-incarceration chiropractic treatment records and  
 7 billing statements with her summary judgment briefing.<sup>8</sup> (ECF No. 64 at 62–98). However, apart  
 8 from a two-page fax (which the Court addresses later), (*id.* at 97–98), Plaintiff’s chiropractic  
 9 records are not part of her prison records at CCWF.

## 10 **ii. Plaintiff’s Medical Treatment at CCWF<sup>9</sup>**

11 From April 2020 to June 2022, Dr. Gu was one of Plaintiff’s assigned medical providers  
 12 at CCWF. (Declaration of Dr. Gu (“Dr. Gu Decl.”), ECF No. 57-6 at ¶ 5). Because Plaintiff saw  
 13 other providers before, during, and after this time period, the Court will summarize Plaintiff’s  
 14 medical treatment below in chronological order as follows: (1) from May 2019 to June 4, 2020,  
 15 the date Plaintiff had her first appointment with Dr. Gu; (2) June 4, 2020 to May 5, 2022 – the  
 16 time period when Plaintiff was under Dr. Gu’s care; and (3) treatment subsequent to Plaintiff  
 17 filing this lawsuit on May 23, 2022.

### 18 May 2019 to June 4, 2020:

19 Shortly after her transfer to CCWF in 2019, Plaintiff began seeking treatment for chronic  
 20 rib pain, which included her submitting requests for chiropractic treatment to “put [her rib] back  
 21 in [place].” (*See* Pl. Decl. at 31–32; ECF No. 64 at 103 (reporting chronic rib pain during initial  
 22 medical intake appointment following transfer to CCWF); *id.* at 107, 114–18, 121 (CDCR 7362  
 23 sick call slips for chronic rib pain and/or “right rib out”)).

24 On October 9, 2019, Plaintiff saw Dr. Martha Garcia, M.D., for complaints of “ongoing

25 <sup>7</sup> The discharge summary listed Plaintiff’s medical problems as: “left knee joint pain, dental examination,  
 26 dental caries, FOSS III, adjustment disorder with mixed anxiety and depressed mood, left sciatica, and  
 27 digestive system disorder.” (ECF No. 57-5 at 2 (internal medical codes omitted)).

28 <sup>8</sup> Dr. Gu objects to the chiropractic treatment records on relevancy, hearsay, and authenticity grounds.  
 (ECF No. 67-3 at 2). The Court will address these objections, if necessary, in its analysis.

<sup>9</sup> The parties each submitted medical records that they consider pertinent to their summary judgment  
 arguments. Because there is considerable overlap in the two sets of records, the Court has elected to set  
 forth the medical evidence in chronological order rather than summarizing each set of records separately.

1 pain in the rib cage.” (ECF No. 57-5 at 4; ECF No. 64 at 119–20). During this visit, Plaintiff told  
2 Dr. Garcia that her right fourth rib “became unstable” following a 2008 motor vehicle accident,  
3 and now periodically “comes out.” (*Id.*) Plaintiff reported that prior to her arrest, she saw a  
4 chiropractor “every month to every 3 months” to have the fourth rib “popped . . . into place,” and  
5 that she also underwent physical therapy to “help stabilize [the] rib.” (*Id.*) On physical  
6 examination, Dr. Garcia noted “right rib palpable and prominent at sternocostal area.” (*Id.*) Dr.  
7 Garcia submitted a referral to physical therapy and directed Plaintiff to use ibuprofen and topical  
8 capsaicin cream for pain management. (*Id.*)

9 On December 17, 2019, Plaintiff had her first physical therapy session, where she reported  
10 left knee pain as well as right-sided fourth “rib/sternum pain, shoulder pain and neck pain that  
11 stemmed from MVA [motor vehicle accident] back in 2008.” (ECF No. 57-5 at 6). Specific to her  
12 rib pain, Plaintiff told the physical therapist that she had pain due to her fourth rib “being out”  
13 with the pain radiating to her right neck and shoulder. (*Id.* at 6–7). The physical therapist  
14 developed a treatment plan of one to two sessions of physical therapy per week for a period of  
15 five to six weeks. (*Id.* at 8).

16 Plaintiff’s physical therapy treatment plan did not commence until approximately three  
17 months later, in March 2020.<sup>10</sup> (ECF No. 57-5 at 9–42). Plaintiff received physical therapy twice  
18 a week from March 9, 2020, through April 22, 2020. (*Id.*) These therapy sessions, however,  
19 focused solely on Plaintiff’s left knee pain. (*Id.*) At the final session, the physical therapist noted  
20 that Plaintiff had made steady progress regarding her left knee and suggested that she “continue  
21 her therapy, with the focus of her treatment on her R [right] rib cage.” (*Id.* at 41). The physical  
22 therapist recommended another round of physical therapy to address the right rib cage pain. (*Id.*)

23 On May 5, 2020, Plaintiff saw Dr. Garcia to follow-up on the completed physical therapy  
24 sessions regarding her left knee. (ECF No. 57-5 at 43; ECF No. 64 at 126). At that time, Dr.  
25 Garcia submitted a referral for the additional physical therapy sessions recommended by the  
26 physical therapist for Plaintiff’s right rib cage pain. (ECF No. 64 at 265).

A few weeks later, on May 20, 2020, Plaintiff had her first physical therapy session for

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27 <sup>10</sup> According to Dr. Feinberg, Plaintiff’s medical records are silent as to the reason for the delay in starting  
28 the recommended physical treatment plan. (Dr. Feinberg Decl. ¶ 12). Dr. Feinberg speculates that the  
delay was “perhaps [due to] a physical therapist staffing change or unavailability.” (*Id.*)

1 her right rib cage pain. (ECF No. 57-5 at 45–47). The physical therapy notes for that session  
2 indicate that Plaintiff was able to complete the exercises with “good tolerance.” (Id. at 47).  
3 Plaintiff’s subsequent physical therapy sessions were “postponed due to COVID-19 precautions”  
4 according to a nurse progress note dated June 1, 2020. (Id. at 48).

5 June 4, 2020 to May 5, 2022:

6 On June 4, 2020, Plaintiff saw Dr. Gu for the first time. (ECF No. 57-5 at 49–51; ECF No.  
7 64 at 130–31). During this visit, Plaintiff reported to Dr. Gu that she had chronic right rib pain.  
8 (ECF No. 57-5 at 49). Plaintiff explained that she had a single physical therapy session the month  
9 before, but was now doing home exercises because her remaining physical therapy sessions had  
10 been temporarily stopped due to COVID-19 restrictions. (Id. at 49). Plaintiff also told Dr. Gu that  
11 she had seen a chiropractor multiple times for her rib pain prior to incarceration, and she  
12 specifically asked Dr. Gu to refer her to a chiropractor. (Id.) On physical examination, Dr. Gu  
13 noted “right 3 rib to sternum joint slight bulging.” (Id.) Dr. Gu informed Plaintiff that a  
14 chiropractor referral was not indicated “per CDCR policy” and encouraged her to continue with  
15 daily home exercises. (Id.) Dr. Gu also noted that Plaintiff “disagreed with [the] care plan” and  
16 threatened to file a lawsuit. (Id. at 51).

17 In her declaration, Plaintiff states that Dr. Gu told her during the June 4th appointment  
18 that he had “never heard of a rib coming out of place.” (ECF No. 64 at 34). Plaintiff states that  
19 she offered to have her pre-incarceration chiropractic records sent to CCWF for Dr. Gu’s review,  
20 but “Dr. Gu stated, ‘that’s unnecessary’ and expressed that he did not believe her.” (Id.)

21 On August 17, 2020, Plaintiff saw Dr. Elizabeth Wasson, M.D., for complaints of right  
22 upper back spasms induced by a poorly fitted prison issued bra. (ECF No. 57-5 at 52; ECF No. 64  
23 at 137–39). During this visit, Plaintiff reported to Dr. Wasson that she had dislocated her right  
24 fourth anterior rib in a motor vehicle accident in 2008, and since then, she had “managed  
25 discomfort associated with this chronically dislocated rib through chiropractic care and physical  
26 therapy.” (Id.) Plaintiff also told Dr. Wasson that prior to the implementation of COVID-19  
27 restrictions, she had been “working with physical therapy at CCWF in regards to this chronic  
28 condition with symptom improvement.” (Id.) On physical exam, Dr. Wasson noted that there was  
“no obvious anterior rib deformity present with visualization or with palpation. No bruising or

1 significant pain with palpation noted involving any anterior ribs.” (Id. at 53). Dr. Wasson  
2 prescribed lidoderm gel to treat the muscle spasms and directed CCWF prison staff to procure a  
3 correctly fitted bra. (Id.) As for Plaintiff’s “[c]hronically dislocated right 4th anterior rib,” Dr.  
4 Wasson documented that she would “place a consult to physical therapy to occur once onsite  
5 physical therapy services resume” after COVID-19 restrictions are lifted. (Id.)

6 Approximately two months later, on October 5, 2020, Plaintiff resumed physical therapy  
7 sessions for her right fourth anterior rib pain. (ECF No. 57-5 at 56). She had sessions twice per  
8 week through November 2, 2020. (Id. at 57–78). Plaintiff reported improvement and pain relief at  
9 the end of some of the sessions, but at other sessions, she reported continued pain. (See id. at 62  
10 (Oct. 7, 2020 session where Plaintiff “felt fine with today’s treatment, although having  
11 unexpected pain with lateral flexion stretches towards the right”); id. at 64 (Oct. 12, 2020 session  
12 where Plaintiff had “no complaints” and “reported feeling good after today’s [sic] treatment”); id.  
13 at 68 (Oct. 14, 2020 session where Plaintiff reportedly “felt her rib move during [the] session” but  
14 “felt fine after the treatment” and had “no worse pain afterwards”); id. at 72 (Oct. 26, 2020  
15 session where Plaintiff “reported relief with manual therapy” and “felt good with her treatment”);  
16 id. at 74 (Oct. 29, 2020 session where Plaintiff reported “no improvement with her rib pain, . . .  
state[d] pain is the same and . . . reported increase in frequency of displacement of her rib”).

17 Plaintiff was discharged from physical therapy on November 2, 2020, with the physical  
18 therapist noting that Plaintiff “made fair progress through her physical therapy,” but was “still  
19 having the same pain on her R 4<sup>th</sup> rib, with intermittent subluxation reported.” (ECF No. 57-5 at  
20 77). The physical therapist advised Plaintiff to follow-up with her physician and suggested that  
21 she may require imaging to further evaluate her rib pain. (Id.)

22 On November 12, 2020, Plaintiff saw physician assistant Kelly Phan for follow-up after  
23 completing physical therapy on her rib. (ECF No. 57-5 at 79–80; ECF No. 64 at 147–48).  
24 Plaintiff told Phan that she had “been under [the] care of [a] chiropractor and PT prior to  
25 incarceration to stabilize her pain, and now that she has failed official PT here [at CCWF], she is  
26 now requesting to see Ortho.” (ECF No. 57-5 at 79). Plaintiff denied “any change to her pain  
27 from the previous years” and she also denied having any difficulty performing activities of daily  
28 living. (Id.) On physical exam, Phan observed “anterior chest with TTP right fourth rib region.”

1 (Id. at 80). Phanb determined that a referral to orthopedics was not medically indicated at the  
2 time. (Id.) She ordered x-rays of Plaintiff's right ribs. (Id.)

3 On November 16, 2020, x-rays of Plaintiff's right ribs were taken. (ECF No. 57-5 at 81).  
4 The radiologist found "no acute cardiopulmonary abnormality or displaced rib fracture." (Id.)

5 Plaintiff saw Dr. Gu for the second time on January 20, 2021. (ECF No. 57-5 at 83–84).  
6 Plaintiff reported that she had "chronic right upper rib area pain," that she frequently used  
7 chiropractic treatment to help release the pain prior to her incarceration, and that her recent round  
8 of physical therapy had not helped with the pain. (Id. at 83). Plaintiff again requested a referral to  
9 a chiropractor. (Id.) Dr. Gu documented in his treatment note that he reviewed the November 16,  
10 2020 x-ray results with Plaintiff and explained to her that her rib pain is a chronic condition and  
11 that "[i]n general, we do not offer chiropractics for the chronic conditions." (Id.) He advised  
12 Plaintiff to continue "daily physical exercise to release pain and maintain [] function." (Id.)

13 Plaintiff's third appointment with Dr. Gu was approximately two months later, on March  
14 4, 2021, during which Plaintiff again requested to see a chiropractor. (ECF No. 57-5 at 86–87;  
15 ECF No. 64 at 153–55). Dr. Gu stated that "we do not offer" chiropractic services and he  
16 recommended that Plaintiff continue taking the three medications previously prescribed for pain  
management (Tylenol, ibuprofen, and a topical cream). (Id.)

17 Plaintiff's fourth appointment with Dr. Gu was on July 1, 2021, for right rib pain flare-up.  
18 (ECF No. 64 at 159–61). On physical examination, Dr. Gu noted "right front 2end rib with  
19 sternum area mild tenderness on palpation." (Id. at 160). Dr. Gu documented that he observed  
20 Plaintiff sitting comfortably in the office despite "claim[ing] severe pain." (Id. at 161). Dr. Gu  
21 once again advised Plaintiff that her rib pain was a chronic condition, and he recommended that  
22 she continue her current care plan. (Id. at 160–61).

23 Plaintiff's fifth appointment with Dr. Gu occurred one month later on August 10, 2021.  
24 (ECF No. 57-5 at 89–90; ECF No. 64 at 162–63). During this visit, Plaintiff reported that her  
25 right upper rib area pain had gotten worse after she had been assigned a job in the kitchen. (ECF  
26 No. 57-5 at 89). On physical exam, Dr. Gu noted a "focal prominent rib" in the right upper chest  
27 near sternum area with "very minimal tenderness on palpation." (Id. at 90). Plaintiff requested  
28 referrals for chiropractic treatment and orthopedics. (Id. at 89–90). Dr. Gu determined that an



1 “orthopedics consult is not indicated” for her rib pain. (*Id.* at 90). And as for her repeated request  
2 for chiropractic treatment, Dr. Gu explained to Plaintiff that chiropractic care “is an alternative  
3 therapy that is not offered based on the lack of evidence of effectiveness for her chronic pain.”  
4 (*Id.* at 89; *see also* Dr. Gu Decl. ¶ 11). Dr. Gu advised Plaintiff to speak with her counselor about  
5 obtaining a change in job assignments. (ECF No. 57-5 at 89).

6 Plaintiff’s fifth appointment with Dr. Gu was a week later, on August 17, 2021. (ECF No.  
7 57-5 at 94; ECF No. 64 at 168–69). This visit primarily concerned Plaintiff’s asthma, but Dr. Gu  
8 documented in his treatment note that he provided Plaintiff paperwork limiting her work  
9 assignments to those that “avoid right shoulder/arm repetitive movement” due to her chronic rib  
10 pain. (*Id.*)

11 On August 22, 2021, Plaintiff sought emergency medical treatment when she felt “her  
12 right upper rib pop[] out” after she pushed a food cart in the dining hall. (ECF No. 64 at 171). She  
13 was prescribed topical lidocaine cream and ibuprofen, and given a “3 days lay in.” (*Id.*)

14 On September 30, 2021, Plaintiff saw Dr. Gu to request a lower bunk because “climbing  
15 [was] aggravating [her] rib.” (ECF No. 64 at 178–79). On physical examination, Dr. Gu noted  
16 “mild tenderness on palpation in right upper rib.” (*Id.* at 178). Dr. Gu assessed her rib pain as  
17 “soft tissue chronic pain” and explained that her condition did not qualify her for a lower bunk.  
18 (*Id.* at 179).

19 Plaintiff saw Dr. Gu for the final time approximately eight months later, on May 5,  
20 2022.<sup>11</sup> (ECF No. 57-5 at 97). This visit concerned Plaintiff’s allergic rhinitis, and no complaint  
21 of rib pain was addressed. (*Id.*) Approximately three weeks after this visit, Plaintiff filed this  
22 lawsuit on May 23, 2022. (ECF No. 1).

23 Treatment Subsequent to Filing Lawsuit:

24 On June 8, 2022, Plaintiff saw Dr. Michael Lee, M.D., with complaints of back and rib  
25 pain. (ECF No. 64 at 183–85). Plaintiff reported that she saw a chiropractor for manipulation  
26 prior to her incarceration, that she had physical therapy while incarcerated, and that she had been

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27 <sup>11</sup> Based on the medical records Plaintiff provided, she had other appointments with Dr. Gu during the  
28 period he was her primary care physician. Because those appointments were for other medical issues, they  
are not relevant to the Court’s analysis. (*See, e.g.*, ECF No. 64 at 132 (June 24, 2020 appointment for  
asthma), *id.* at 134 (July 20, 2020 appointment for knee pain), *id.* at 140 (Sept. 25, 2020 appointment for  
asthma), *id.* at 156–57 (March 18, 2021 appointment for left shoulder cortisone injection)).



1 prescribed Tylenol and topical lidocaine cream for pain management on an as-needed basis. (Id.)  
2 On physical exam, Dr. Lee observed: “Right anterior fourth costosternal junction visibly and  
3 palpably anterior on exam with respect to others; right posterior fourth costovertebral joint and  
4 surrounding tissues tender to palpation.” (Id. at 184). Dr. Lee ordered x-rays of Plaintiff’s  
5 thoracic spine for further evaluation. (Id. at 185).

6 On July 18, 2022, x-rays of Plaintiff’s thoracic spine were taken. (ECF No. 57-5 at 101).  
7 A radiologist reviewed the images and found “no identified fracture or subluxation.” (Id.; see also  
8 ECF No. 67-7 at 2).

9 In 2023, Plaintiff saw Dr. Pardeep Kahlon, M.D, twice with complaints of rib pain. At her  
10 April 14, 2023 appointment, Plaintiff told Dr. Kahlon that she has intermittent right fourth  
11 anterior and posterior rib pain, “characterized as sharp pain with flare-ups of immobility every 3-  
12 6 months due to pain which lasts from 2-7 days.” (ECF No. 64 at 195). Plaintiff reported that the  
13 rib pain was caused by subluxation, and that she needed a chiropractor to put the rib back in place  
14 and physical therapy to stabilize the rib. (Id.) On physical examination, Dr. Kahlon noted that  
15 Plaintiff’s right “anterior ~ 4th rib notch palpated with pt grimacing however no movement noted  
16 of bony prominence.” (Id.) In his assessment, Dr. Kahlon noted that another provider, Dr. Garcia,  
17 had observed Plaintiff pulling weeds from the ground “this whole week with improper form.”  
18 (Id.) Dr. Kahlon referred Plaintiff to orthopedics for further evaluation and management of her rib  
19 pain. (Id. at 196).

20 Plaintiff next saw Dr. Kahlon on August 14, 2023, during which she specifically requested  
21 a referral to chiropractic care. (ECF No. 67-7 at 3). Dr. Kahlon documented in his treatment  
22 notes: “Pt also wants me to check on her Chiropractor records to show that she underwent  
23 services with them in the past and wants me to put in a referral for Chiropracter [sic] services . . .  
24 Pt advises me to put in an order for Chiropractor services into the chart to save my own bottom in  
25 a lawsuit pt is preparing.” (Id.) Dr. Kahlon determined that chiropractor services “are not  
26 medically indicated at this time as [Plaintiff] is currently asymptomatic.” (Id.)

27 On August 25, 2023, Plaintiff had a telemedicine referral appointment with an orthopedic  
28 surgeon Dr. Michael Brown, M.D. (ECF No. 64 at 202–03). Dr. Brown recommended that  
Plaintiff “be seen by a back specialist to evaluate [the area at issue] to see if this is rib subluxation

1 or if it is back related with a thoracic disc that could be causing radiating pain around to the  
 2 front[.]” (Id. at 202). Dr. Brown also ordered repeat thoracic vertebrae and rib x-rays. (Id. at 203).  
 3 Dr. Brown recommended that in the meantime, Plaintiff be “seen by a chiropractor to do  
 4 manipulation which has given her relief for at least a short time in the past.” (Id.)

5 On May 2, 2024, a contract medical provider at CCWF, Dr. Bankole Asebiomo, M.D.,  
 6 referred Plaintiff to a spine specialist as per the orthopedic surgeon’s recommendation. (ECF No.  
 7 64 at 208–09).

8 An x-ray of Plaintiff’s lumbar spine dated July 10, 2024 showed “no evidence of dynamic  
 9 motion” and “mild L5-S1 discogenic degenerative changes.” (ECF No. 64 at 210). An x-ray of  
 10 Plaintiff’s thoracic spine dated September 23, 2024 showed “mild degenerative changes within  
 11 the thoracic spine without evidence of focal neural compromise.” (Id. at 212).

12 On September 30, 2024, Plaintiff had an in-person appointment with an orthopedic spine  
 13 specialist. (ECF No. 64 at 213–15). On physical examination, the specialist noted there was “no  
 14 obvious dislocation of the rib and sternum.” (Id. at 213). He assessed that spine surgery was not  
 15 medically indicated, and he documented in his treatment note that Plaintiff “would like to see a  
 16 chiropractor for adjustments for her rib disorder.” (Id. at 214).

17 On November 26, 2024, Dr. Asebiomo referred Plaintiff to a chiropractor “as suggested  
 18 by Ortho.” (ECF No. 64 at 217; see also Declaration of Dr. Akinwumi Ola (“Dr. Ola Decl.”),  
 19 ECF No. 67-4 at ¶ 4). The corresponding request for service for chiropractic care noted that  
 20 orthopedics recommended referral to chiropractor “as desired by patient.” (ECF No. 67-5 at 2).

21 In his declaration dated January 10, 2025, CCWF chief medical executive Dr. Ola  
 22 provided the following information regarding the status of the chiropractor referral:

23 To ensure uniform and efficient patient care, all Requests for Services are  
 24 reviewed by an inmate-patient’s institutional Utilization Management Committee.  
 25 Because chiropractic services is not a specialty listed in our system, it is  
 26 considered a “specialized service unlisted” in CCHCS’s medical services for  
 27 patients. As the request for chiropractic services is not routinely requested and may  
 28 not be prescribed without further authorization, it was referred to the CCHCS  
 Statewide Medical Authorization Team (SMART) Committee at CDCR  
 Headquarters. The SMART Committee evaluate the benefit of this request based  
 on evidence-based clinical decision support criteria.

As of the date of my declaration, [Plaintiff’s] referral has neither been  
 approved or denied by the SMART Committee.

(Dr. Ola Decl. ¶¶ 5–6).

### iii. Chiropractic Records Sent to CCWF in 2023

Almost a year after she commenced this lawsuit, Plaintiff requested that chiropractor Joshua Bray, D.C. release her medical records to CCWF regarding chiropractic care he provided to her from April 2010 until her arrest. (ECF No. 57-5 at 111). On April 20, 2023, Bray Chiropractic sent a two-page fax to CCWF, consisting of a cover letter and Plaintiff’s chart note from her last visit to the clinic on January 23, 2018. (*Id.* at 114). The cover letter indicated that Bray treated Plaintiff “for 18 visits over four and a half years for similar flare-ups of the same chief complaint symptoms. This [chart] note details the affected regions and the musculoskeletal treatments (myofascial release, CMT chiropractic manipulative therapy, and exercise therapy) rendered to help [Plaintiff] control her symptoms.” (*Id.* at 113). As to the chart note itself, it stated that Plaintiff’s chief complaint was “posterior cervical (neck), upper thoracic, mid thoracic and right sacroiliac [pain].” (ECF No. 57-5 at 114). The objective findings section of the note stated, among other findings, that Plaintiff had “extraspinal restrictions/subluxations” in the “right T4 rib, right T5 rib, and left T3 rib.” (*Id.*) The primary treatment administered during the visit was myofascial release and “[d]iversified-[c]hiropractic [m]anipulative [t]herapy (CMT)” in multiple areas including the “right T4 rib and right T5 rib.” (*Id.*) At the end of the visit, the chiropractor advised Plaintiff to continue with a home exercise program. (*Id.*)

### iv. Plaintiff’s Remaining Summary Judgment Evidence

Plaintiff’s remaining summary judgment evidence consists of three health care grievances that she submitted regarding her rib pain while incarcerated at CWCF. (ECF No. 64 at 219–38). She also includes grievances and requests for accommodation that she submitted concerning prison issued undergarments. (*Id.* at 242–56).

Plaintiff also submitted an “Inmate Assignment History” form, which appears to show her prison work assignments. (ECF No. 64 at 239–41).

### v. Dr. Feinberg’s Expert Opinion

In his declaration, Dr. Feinberg offered the following opinion based on his review of Plaintiff’s medical records and his training and experience:

It is my professional opinion that Dr. Gu chose a course of treatment for [Plaintiff’s] complaints of rib pain that was medically acceptable under the

circumstances. There is no evidence that Dr. Gu ever refused to review [Plaintiff's] relevant medical records. Dr. Gu clearly reviewed physical therapy documentation and x-ray reports as they pertained to [Plaintiff's] complaints of rib pain. The medical records from jail available to Dr. Gu included a number of medical conditions, but no mention of any rib problem. The outside chiropractor records discussed in the above paragraph did not become available in the CCHCS medical records until April of 2023, almost one year after Dr. Gu's final appointment with [Plaintiff] and six months after the First Amended Complaint was filed. These records do not confirm a diagnosis of subluxation of [Plaintiff's] right fourth rib, as no diagnoses are listed. However, even if they or earlier chiropractic notes did include such a diagnosis, that does not mean that such a condition continued to exist during the time [Plaintiff] was under Dr. Gu's care, or that chiropractic treatment was then or continued to be the appropriate treatment going forward. There is no evidence that [Plaintiff] had a rib subluxation while under Dr. Gu's care, with multiple imaging studies reporting no rib displacement or subluxation. Nor is there evidence that [Plaintiff] had any medical condition necessitating chiropractic treatments while under Dr. Gu's care.

Moreover, the concept of subluxation, as diagnosed and treated by a chiropractor, was already no longer felt to have a legitimate place in modern chiropractic care during the relevant time period. A 2018 article from the journal *Chiropractic & Manual Therapies*[] regarding the teaching of subluxation in chiropractic degree programs, concluded that such "[u]nscientific terms and concepts should have no place in modern education, except perhaps in historical context. Unless these outdated concepts are rejected, the chiropractic profession and individual chiropractors will likely continue to face difficulties integrating with established health care systems and attaining cultural authority as experts in conservative neuro-musculoskeletal health care."

(ECF No. 57-3 at ¶ 30 (footnote omitted)).

#### **D. Discussion**

##### **i. Serious Medical Need**

"A serious medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." McGuckin, 974 F.2d at 1059 (internal citation and quotation marks omitted). "The existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain are examples of indications that a prisoner has a serious need for medical treatment." Id.

Although Dr. Gu references Plaintiff's imaging results, which showed no evidence of a rib

1 fracture or subluxation, in his briefing, see ECF No. 67 at 7–8, he does not dispute for purposes of  
 2 summary judgment that Plaintiff’s chronic rib pain was a serious medical need. (See ECF No. 57-  
 3 1 at 16 (directing arguments to second prong of deliberate indifference analysis, i.e. that Dr Gu  
 4 “was not deliberately indifferent to [Plaintiff’s] medical need”).

5 Notwithstanding Dr. Gu’s position, Plaintiff asserts that she had a serious medical need  
 6 based on (1) her pre-existing rib condition that she received chiropractor care and physical  
 7 therapy for prior to her arrest, (2) the various rib-related findings noted during physical  
 8 examinations conducted by Dr. Gu or other prison medical providers, (3) Dr. Gu’s assessment  
 9 that she had chronic rib pain, (4) the physical therapy sessions she had at CCWF for her rib pain,  
 10 and (5) the subsequent specialty referrals (e.g., orthopedics, spine specialist) that she received  
 11 after filing this lawsuit. (See ECF No. 64 at 14).

12 Based on the above, the Court finds that Plaintiff has presented a triable issue of fact that  
 13 her chronic rib pain was a serious medical need during the time period she was under Dr. Gu’s  
 14 care at CCWF.

## 15 **ii. Dr. Gu’s Response to Plaintiff’s Serious Medical Need**

16 As to the second prong of the Eighth Amendment deliberate indifference analysis, the  
 17 Court concludes that Plaintiff has failed to raise a genuine dispute of material fact as to whether  
 18 Dr. Gu’s response to Plaintiff’s serious medical need was deliberately indifferent, for the reasons  
 19 discussed below.

20 Dr. Gu has met his burden of demonstrating the absence of a genuine issue of material fact  
 21 as to whether he failed to treat Plaintiff’s condition. The undisputed evidence shows that Dr. Gu  
 22 addressed Plaintiff’s complaints of rib pain throughout the time period she was under his care. At  
 23 multiple appointments, Dr. Gu reviewed Plaintiff’s subjective complaints regarding her rib pain,  
 24 reviewed her prison medical file and relevant imaging results, and conducted a physical  
 25 examination before he assessed that she had chronic rib pain and advised her to follow a  
 26 treatment care plan that consisted of home exercises (while COVID-19 restrictions were in place)  
 27 and taking medication for pain management on an as-needed basis. (See, e.g., ECF No. 57-5 at  
 28 49–51 (June 2020 appointment where Dr. Gu conducted physical examination, reviewed

1 Plaintiff's physical therapy notes, and advised her to do daily home exercises for rib pain); id. at  
2 83–84 (January 2021 appointment during which Dr. Gu reviewed x-ray results and advised  
3 Plaintiff to continue with daily physical exercises to relieve pain); id. at 86–87 (March 2021  
4 appointment during which Dr. Gu recommended that Plaintiff continue with prescribed oral and  
5 topical medications for rib-related pain management); ECF No. 64 at 159–61 (July 2021 visit  
6 where Dr. Gu conducted physical examination and recommended that she continue with current  
7 care plan). Dr. Gu also provided Plaintiff paperwork limiting her prison work assignments to help  
8 minimize her chronic rib pain. (ECF No. 57-5 at 94).

9 Dr. Gu has also met his burden of demonstrating the absence of a genuine issue of  
10 material fact as to whether his course of treatment was medically unacceptable under the  
11 circumstances and was chosen in conscious disregard of an excessive risk to Plaintiff's health. Dr.  
12 Gu has submitted Dr. Feinberg's unrefuted expert opinion that Dr. Gu chose a course of treatment  
13 for Plaintiff's chronic rib pain that was medically acceptable under the circumstances. (See Dr.  
14 Feinberg Decl. ¶ 30). Additionally, Dr. Gu has presented records indicating that all the medical  
15 providers who evaluated Plaintiff during the same time period as Dr. Gu recommended a similar  
16 course of treatment – i.e., that she undergo physical therapy (or home exercises while COVID-19  
17 restrictions were in place) and take pain medications or use topical creams for pain management.  
18 See, e.g., ECF No. 57-5 at 4 (October 2019 visit during which Dr. Garcia recommended Plaintiff  
19 undergo physical therapy and use ibuprofen and topical capsaicin cream); id. at 43 (May 2020  
20 visit during which Dr. Garcia submitted referral for additional physical therapy); id. at 53 (August  
21 2020 visit during which Dr. Wasson prescribed lidoderm gel and indicated that she would refer to  
22 onsite physical therapy once COVID-19 restrictions were lifted). These providers did not find that  
23 chiropractic care was medically indicated for Plaintiff's chronic rib pain. (Id. at 4, 43, 52).

24 The Court thus turns to Plaintiff's evidence to determine if she has come forth with  
25 evidence from which a jury could reasonably render a verdict in her favor as to whether Dr. Gu  
26 acted with deliberate indifference.

27 In opposition, Plaintiff relies on her pre-incarceration chiropractic treatment records.  
28 However, nothing in those records suggests that Dr. Gu's chosen course of treatment was

1 medically unacceptable. Plaintiff's earliest chiropractic records from 2008 through 2010, which  
 2 were never provided to CCWF, are handwritten and largely illegible, see ECF No. 64 at 65–79,  
 3 and Plaintiff fails to point to anything in those records or the corresponding billing statements  
 4 suggesting that chiropractic treatment was the only method for treating her rib pain, see id. at 84–  
 5 96. The earlier records also include an orthopedic consultation from 2009, which does not include  
 6 any diagnosis of rib pain or subluxation, see id. at 82.<sup>12</sup> As for the January 2018 chart note from  
 7 Bray Chiropractic, which Plaintiff sent to CCWF nearly a year after Dr. Gu last treated her, the  
 8 note reflects that Plaintiff received chiropractic manipulative therapy on that date, but also  
 9 suggests that other treatment methods were available to treat her condition – namely, a home  
 10 exercise program to improve thoracic and rib cage flexibility. (See ECF No. 64 at 98).

11 Plaintiff also presents evidence that Dr. Gu made statements that were dismissive of her  
 12 complaints. (See ECF No. 64 at 34 (stating that Dr. Gu told her during June 4, 2020 appointment  
 13 that he had “never heard of a rib coming out of place” and that when she offered to send her pre-  
 14 incarceration records, “Dr. Gu stated, ‘that’s unnecessary’ and expressed that he did not believe  
 15 her”)). However, assuming that Dr. Gu made such statements, they do not indicate that he in fact  
 16 ignored her complaints or chose a course of treatment that was medically unacceptable. Plaintiff  
 17 does not deny that Dr. Gu addressed her complaints as indicated above, despite any dismissive  
 18 comments he may have made. See Tilei v. California Dep’t of Corr. & Rehab., No. 21-55327,  
 19 2022 WL 16946600, at \*1 (9th Cir. Nov. 15, 2022) (“Tilei’s allegations that the doctors were  
 20 rude and dismissive are similarly irrelevant because they do not show that the treatment was  
 21 inadequate.”).

22 Moreover, these alleged statements are consistent with Dr. Feinberg’s expert opinion that  
 23 “the concept of subluxation, as diagnosed and treated by a chiropractor, was already no longer felt  
 24 to have a legitimate place in modern chiropractic care during the relevant time period.” (Dr.  
 25 Feinberg Decl. ¶ 30). In other words, even if Dr. Gu questioned Plaintiff’s belief that she needed  
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27 <sup>12</sup> The orthopedist diagnosed Plaintiff with acute cervicothoracic and lumbosacral musculoligamentous  
 28 spinal sprain injury relative to her 2009 motor vehicle accident, paraspinal sprain, right shoulder sprain,  
 mechanical cephalalgia, and insomnia. (ECF No. 64 at 82).



1 chiropractic care for her unstable rib, such comments would indicate a difference of opinion  
2 between Plaintiff and Dr. Gu regarding the appropriate course of treatment.

3 Again, to establish that a difference of opinion rises to the level of deliberate indifference,  
4 Plaintiff “must show that the chosen course of treatment ‘was medically unacceptable under the  
5 circumstances,’ and was chosen ‘in conscious disregard of an excessive risk to [her] health.’”  
6 Toguchi, 391 F.3d at 1058 (quoting Jackson, 90 F.3d at 332). Here, Plaintiff does not present any  
7 medical evidence that Dr. Gu’s course of treatment was medically unacceptable under the  
8 circumstances. The closest that Plaintiff comes to presenting such evidence are medical records  
9 indicating that Dr. Asebiomo recently submitted a request for service in November 2024 for  
10 chiropractic care. However, nothing in that submission or the medical records related to it  
11 indicate that Dr. Gu’s prior course of treatment was medically unacceptable. On the contrary, the  
12 records indicate that the request for service was issued “as desired by patient” and has not yet  
13 been approved. (See Dr. Ola Decl. ¶ 6; ECF No. 67-5 at 2). Moreover, other records from after  
14 the filing of this lawsuit indicate that Plaintiff’s subsequent treating providers continued to  
15 determine that a chiropractor referral was not medically indicated. (See ECF No. 67-7 at 3 (Dr.  
16 Kahlon determining in August 2023 that chiropractor services were not medically indicated  
17 because Plaintiff was asymptomatic)).

18 Plaintiff also asserts that Dr. Gu’s refusal to review her pre-incarceration chiropractic  
19 records constitutes deliberate indifference. (See ECF No. 64 at 5). However, Dr. Gu reviewed  
20 multiple medical records of Plaintiff’s rib in the course of his treatment reflecting Plaintiff’s  
21 present medical condition at the time of Dr. Gu’s care. For example, imaging studies taken at  
22 CCWF did not show a rib fracture or subluxation. (See e.g., ECF No. 57-5 at 81 (“no acute  
23 cardiopulmonary abnormality or displaced rib fracture” found on November 2020 right rib x-  
24 rays), id. at 101 (“no identified fracture or subluxation” found in July 2022 thoracic spine x-ray).  
25 In light of these more recent records, it was not deliberate indifference to fail to obtain even  
26 earlier medical records. Put another way, Plaintiff has failed to submit evidence that it was  
27 medically unacceptable to rely on more recent medical records of Plaintiff’s condition without  
28 obtaining earlier records. Additionally, it is undisputed that Plaintiff did not have her chiropractic

1 records released to CCWF until almost a year after her last visit with Dr. Gu. Thus, this is not a  
2 situation where Dr. Gu had possession of, but deliberately ignored, available medical records.

3 Based on the above, the Court concludes that Plaintiff has failed to raise a genuine issue of  
4 material fact that Dr. Gu's response to her serious medical need was deliberately indifferent.  
5 Accordingly, the Court recommends granting Dr. Gu's motion for summary judgment on this  
6 basis as no reasonable juror could conclude that Dr. Gu was deliberately indifferent to Plaintiff's  
7 serious medical need in violation of the Eighth Amendment.<sup>13</sup>

8 **V. CONCLUSION AND RECOMMENDATION**

9 Accordingly, the Court RECOMMENDS:

- 10 1. Plaintiff's Motion to Exclude Dr. Feinberg's Expert Opinion (ECF No. 64 at 46–  
11 61) be DENIED;
- 12 2. Dr. Gu's Motion for Summary Judgment (ECF No. 57) be GRANTED; and
- 13 3. The Clerk of Court be directed to enter judgment in favor of Defendant Wei Gu  
14 and close this case.

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
17 days after being served with these findings and recommendations, any party may file written  
18 objections with the Court. Such a document should be captioned "Objections to Magistrate  
19 Judge's Findings and Recommendations." The objections shall not exceed more than fifteen (15)  
20 pages, including exhibits. Any response to the objections shall be served and filed within fourteen  
21 (14) days after service of the objections.

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28 <sup>13</sup> In light of this recommendation, the Court declines to reach Dr. Gu's remaining arguments (qualified immunity and availability of punitive damages).

1 The parties are advised that failure to file objections within the specified time may result  
2 in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014)  
3 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4 IT IS SO ORDERED.

5  
6 Dated: April 1, 2025

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE